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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/120,664	07/22/1998	DAVID F. GAVIN	101792-100	2454

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WIGGIN AND DANA LLP
ATTENTION: PATENT DOCKETING
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EXAMINER	
CELSA, BENNETT M	

ART UNIT	PAPER NUMBER
1639	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/120,664	GAVIN ET AL.	
	Examiner	Art Unit	
	Bennett Celsa	1639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,38 and 40-49* is/are pending in the application.

4a) Of the above claim(s) *47-49* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,38 and 40-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant's amendment date 1/26/05 is hereby acknowledged.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Status of the Claims

Claims 1, 38 and 40-49 are currently pending.

Claims 47-49 are withdrawn from consideration as being directed to a nonelected invention.

Claims 1, 38 and 40-46 are currently pending and under consideration to the extent of the elected invention.

Election/Restriction

Applicant's election with traverse of Group I (claims 1-11 and 35-38: corresponding to present claims 1, 38 and 40-49) in Paper No. 4 is again acknowledged. In response to the election of species requirement, applicant's elected, without traverse, zinc pyrithione which reads on claims 1, 38 and 40-46, respectively.

Claims 47-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

Drawings

1. This application has been filed with informal drawings (as indicated by applicant) which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Outstanding Objection (s) and/or Rejection (s)

Claim Rejections - 35 USC § 112

2. Claims 42, 45 and 46 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention (NEW MATTER REJECTION).

New claim 42 (and dependent claims 45 and 46) recite "wherein the metal pyrithione .. within a weight range of ratios of from 1:20 to 20:1 of metal pyrithione relative to the metal or metal-containing compound" constitutes new matter since the specification (e.g. page 10) provides support for the ratio only when the metal is copper (e.g. copper pyrithione) and not for any of the other metals.

Discussion

Applicant's arguments directed to the above new matter rejection were considered but deemed nonpersuasive for the following reasons.

Applicant argues that support is present "on at least page 10, lines 1-15 and 23-29, alone or together with page 16, Example 4.

This was considered but deemed nonpersuasive.

Page 10 by itself fails to provide support since the ratio (1:20 to 20:1) refers specifically to copper. Similarly, Example 4 refers to a 1:20 preparation which is exclusive for copper. Accordingly, there is no specification support for including metals other than copper for the presently claimed range.

Accordingly, this rejection is hereby maintained.

Claim Rejections - 35 USC § 102

3. Claims 1, 38, 40, 41, 43 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Morris US Pat. No. 5,916,947 (6/99: filed 9/96 or earlier).

The claims (e.g. claims 1 and 38, and dependents thereon) are drawn to:

Biocidal compositions comprising "composite particles" having a "shell" and a "core" wherein:

the "core" comprises a metal (e.g. zinc) or metal compound (e.g. zinc oxide/selenide); and

the "shell" comprises "metal (e.g. zinc) pyrithione";

wherein the "metal pyrithione" is formed by reaction of a "pyrithione acid" or a "water-soluble pyrithione salt" (e.g. sodium pyrithione) with the core metal or metal compound.

Morris et al. disclose a biocidal composition comprising zinc pyrithione powder (e.g. see col. 7, lines 4-10 and col. 8, lines 29-31) which meet the "composite particle" definition e.g. powder comprises particles.

Additionally, Morris et al. further discloses a biocidal particle composition (e.g. see col. 1, lines 10-20) that comprises a zinc core (e.g. zinc oxide) and a zinc pyrithione "shell" (e.g. see Example 1 and patent claims 1-17.

More particularly, Morris describes an antifouling coating composition in which zinc oxide has been surface coated by a "photosensitizer" (e.g page 1, Abstract; patent claims 1 and 15) such as zinc pyrithione

(e.g. see patent claim 1: small photosensitizer Markush includes zinc pyrithione: see col. 6-7 and col. 8, lines 29-31). Morris teaches surface-coating the zinc oxide with the "photosensitizer" as well as mixing zinc oxide with the "photosensitizer" (e.g. zinc pyrithione: see col. 8, lines 25-32) .

Thus the Morris reference clearly teaches biocidal particles comprising a zinc oxide core and a zinc pyrithione shell; although failing to explicitly teach that the *metal pyrithione is formed by reacting a pyrithione acid/salt with the core metal/metal compound*.

It is noteworthy that the present claim recites the metal pyrithione shell by its means of manufacture e.g. in product-by-process format (e.g. *metal pyrithione is formed by reacting a pyrithione acid/salt with the core metal/metal compound*).

The Morris et al. particle complex which possesses ingredients within the scope of the presently claimed would inherently possess the same physical parameters as presently claimed (e.g. core/shell structure) regardless of is means of manufacture. In this regard, where the claimed and prior art products are identical or substantially identical in structure or composition (as in the present case) or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the appellant and the prior art are the same, the appellant has the burden of showing that they are not." *In re Spada*, 911 F.2d 705, 709,15 USPQ2d 1655, 1658 (Fed. Cir. 1990). For a chemical composition and its properties are inseparable. Therefore,

since the prior art teaches the identical or substantially identical chemical structure, the properties appellant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658(Fed. Cir. 1990); and MPEP 2112.01. The PTO lacks the facilities for making comparisons between prior art and claimed compositions.

Discussion

Applicant's arguments directed to the above rejection were considered but deemed nonpersuasive for the following reason.

Applicant argues that Morris et al. fails to teach "composite particles" (e.g. shell/core) and Morris' method of manufacture differs from applicant's, lacks the ability to transchelate and is physically covered and not chemically reacted.

Initially, it is again noted that applicant composition is claimed as a product-by-process where a "reasonable basis" that the reference and the claimed composition are the same is sufficient to shift the burden to applicant to provide evidence to the contrary (See *In re Best* cited above); even though applicant may have invented a new way of making an old material.

Accordingly, assuming arguendo that applicant is correct that their particles are made by a different process than that utilized by the above-reference, the reference particles nevertheless *prima facie* appear to be the same shell and core as applicant's claimed particles; and thus the burden has reasonably been shifted to the applicants to show that their claimed product is different from that of the reference product. Applicant's argument regarding the method fails to rebut the above rejection. Indeed, these arguments directed to the prior art process were already addressed by the Examiner in

the Examiner's Answer to the Brief of record. Additionally, the BPAI affirmed (paper no. 20) the Examiner regarding the above rejection and subsequently reaffirmed (paper no. 24) this rejection in response to applicant's request for rehearing. All the reasons already of record in response to applicant's arguments are hereby incorporated by reference in their entirety.

The above rejection is hereby maintained.

4. Claims 1, 38, 40, 41, 43 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Hani et al. US Pat. No. 6,162,446 (12/00: filed 3/98).

The claims (e.g. claims 1 and 38, and dependents thereon) are drawn to:

Biocidal compositions comprising "composite particles" having a "shell" and a "core" wherein:

the "core" comprises a metal (e.g. zinc) or metal compound (e.g. zinc oxide/selenide); and

the "shell" comprises "metal (e.g. zinc) pyrithione";

wherein the "metal pyrithione" is formed by reaction of a "pyrithione acid" or a "water-soluble pyrithione salt" (e.g. sodium pyrithione) with the core metal or metal compound.

Hani et al. teach "biocidal" (e.g. antimicrobial: see col.1) compositions comprising zinc pyrithione particles (e.g. the "shell" component) produced by an *in situ* transchelation reaction of:

a. pyrithione acid or a soluble salt (e.g. Na/K pyrithione: see bottom of col. 3 to col. 4); and

b. a metal (e.g. zinc) compound (e.g. the "core" component; including zinc oxide: see col. 3, lines 53-65)

for incorporation into personal care compositions.

See Abstract; col. 2-4; Examples 1 and 2; patent claims, especially claims 1, 6, 8, 9 and 16-20.

The Hani et al. particle complex which possesses ingredients within the scope of the presently claimed would inherently possess the same physical parameters as presently claimed (e.g. core/shell structure), especially since both its components and the means of making the zinc pyrithione shell is the same e.g. transchelation reaction between a zinc compound and a pyrithione acid/salt. In this regard, where the claimed and prior art products are identical or substantially identical in structure or composition (as in the present case) or are produced by identical or substantially identical processes (as is also the case), a prima facie case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the appellant and the prior art are the same, the appellant has the burden of showing that they are not" *In re Spada*, 911 F.2d 705, 709,15 USPQ2d 1655, 1658 (Fed. Cir. 1990). For a chemical composition and its properties are inseparable. Therefore, since the prior art teaches the identical or substantially identical chemical structure, the properties appellant discloses and/or claims are necessarily present. *In re Spada*, 911

F.2d 705, 709, 15 USPQ2d 1655, 1658(Fed. Cir. 1990); and MPEP 2112.01. The PTO lacks the facilities for making comparisons between prior art and claimed compositions.

Discussion

Applicant's arguments directed to the above rejection were considered but deemed nonepersuasive for the following reasons.

Applicant argues that Hani does not disclose any transchelation in the absence of the dispersant or surfactant required by that reference, much less one to produce a composite particle with a portion of the metal core being reacted with the soluble pyrithione salt disclosed in that reference. To the contrary, Hani discloses an in-situ reaction whereby the dispersant or surfactant stabilizes the solid paricles of metal pyrithione that are formed in the Hani personal care composition.

This argument was considered but deemed nonpersuasive for the following reasons.

Initially, it is again noted that applicant composition is claimed as a product-by-process where a "reasonable basis" that the reference and the claimed composition are the same is sufficient to shift the burden to applicant to provide evidence to the contrary (See *In re Best* cited above); even though applicant may have invented a new way of making an old material.

Accordingly, assuming arguendo that applicant is correct that their particles are made by a different process than that utilized by the above-reference; the reference particles nevertheless *prima facie* appear to be the same shell and core as applicant's claimed particles; and thus the burden has reasonably been shifted to the applicants to

show that their claimed product is different from that of the reference product.

Applicant's argument regarding the method fails to rebut the above rejection.

Thus, the above rejection is hereby maintained.

5. Claims 1, 38, 40, 41, 43 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Mohseni et al. US Pat. No. 6,465,015 (10/02: filed 2/98).

The claims (e.g. claims 1 and 38, and dependents thereon) are drawn to:

Biocidal compositions comprising "composite particles" having a "shell" and a "core" wherein:

the "core" comprises a metal (e.g. zinc) or metal compound (e.g. zinc oxide/selenide); and

the "shell" comprises "metal (e.g. zinc) pyrithione";

wherein the "metal pyrithione" is formed by reaction of a "pyrithione acid" or a "water-soluble pyrithione salt" (e.g. sodium pyrithione) with the core metal or metal compound.

Mohseni et al. teach "biocidal" (e.g. see bottom of col. 2) compositions comprising metal (e.g. zinc) pyrithione particles (e.g. the "shell" component) produced by a transchelation reaction (e.g. see patent claim 3) of:

a. pyrithione acid or a soluble salt (e.g. Na/K pyrithione: see examples; patent claims especially claims 28, 29 and 42); and

b. a zinc compound (e.g. the "core" component "comprises zinc"; including zinc sulfate: see examples; patent claims, especially claims 3-42)

for incorporation into personal care products (e.g. examples 8-10).

See also: Abstract; col. 6-8; Examples 1 and 4; patent claims, especially claims 1, 6, 8, 9 and 16-20.

The Mohseni et al. particles possesses ingredients within the scope of the presently claimed which would inherently possess the same physical parameters as presently claimed (e.g. core/shell structure), especially since both its components and the means of making the zinc pyrithione shell is the same e.g. transchelation reaction between a metal (e.g. zinc) compound and a pyrithione acid/salt. In this regard, where the claimed and prior art products are identical or substantially identical in structure or composition (as in the present case) or are produced by identical or substantially identical processes (as in the present case), a prima facie case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the appellant and the prior art are the same, the appellant has the burden of showing that they are not." *In re Spada*, 911 F.2d 705, 709,15 USPQ2d 1655, 1658 (Fed. Cir. 1990). For a chemical composition and its properties are inseparable. Therefore, since the prior art teaches the identical or substantially identical chemical structure, the properties appellant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658(Fed. Cir. 1990); and MPEP 2112.01. The PTO lacks the facilities for making comparisons between prior art and claimed compositions.

Discussion

Applicant's arguments directed to the above rejection were considered but deemed nonpersuasive for the following reasons.

Applicant argues that Mohseni et al nowhere discloses composite particles of any kind, much less composite particles with a metal core and pyrithone salt shell wherein the metal in the shell is formed from the reaction with core metal as instantly claimed. Accordingly, applicant argues, Mohseni et al. does not suggest or disclose the instantly claimed particle configuration, much less how to prepare it.

This argument was considered but deemed nonpersuasive for the following reasons.

Initially, it is again noted that applicant composition is claimed as a product-by-process where a "reasonable basis" that the reference and the claimed composition are the same is sufficient to shift the burden to applicant to provide evidence to the contrary (See *In re Best* cited above); even though applicant may have invented a new way of making an old material.

Accordingly, assuming arguendo that applicant is correct that their particles are made by a different process than that utilized by the above-reference, the reference particles nevertheless *prima facie* appear to be the same shell and core as applicant's claimed particles; and thus the burden has reasonably been shifted to the applicants to show that their claimed product is different from that of the reference product. Applicant's argument regarding the method fails to rebut the above rejection.

Accordingly, the above rejection is hereby maintained.

6. Claims 1, 38 and 40-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris US Pat. No. 5,916,947, Hani et al. US Pat. No. 6,162,446 or Mohseni et al. US Pat. No. 6,465,015 as applied to claims 1, 38, 40, 41, 43 and 44 above, and further in view of Kappock et al. US Pat. No. 5,518,774 (5/96).

The Morris, Hani et al. and Mohseni et al. reference teachings as described above is herein incorporated by reference in their entirety.

Although the Morris, Hani or Mohseni references all teach biocidal compositions comprising pyrithione metal composite particles formed by reacting (e.g. transchelating) a 'core" metal (e.g. zinc) or metal compound (e.g. zinc oxide/selenide) with a "pyrithione acid" or a

"water-soluble pyrithione salt" (e.g. sodium pyrithione) compound, the references differ by failing to explicitly teach a "shell" (e.g. metal (zinc) pyrithione) to "core" e.g. (zinc) metal or metal-containing compound ratio of 1:20 to 20:1. See new claim 42 and dependent claims 45 and 46.

However, the Kappock et al. reference teach metal ion-containing compounds transchelated with pyrithione and its salts to form biocidal particle coating compositions; which its components can be provided in an amount sufficient to provide a molar ratio of pyrithione salt to metal ion-containing compound of between about 1:10 and about 10:1. However, if zinc is employed as the metal, the amount of zinc compound should be optimized to enable complete conversion of the pyrithione salt by transchelation to zinc pyrithione during storage of the coating composition. See Kappock et al. Col. 2-3, especially col. 3, lines 12-32.

Accordingly, the Kappock et al. reference provides ample motivation to one of ordinary skill in the art at the time of applicant's invention to optimize the transchelation reaction components in order to obtain composite particles comprising metal pyrithione to metal or metal containing compound core components of about 1:10 and about 10:1 or otherwise optimize and obtain ratio amounts within the scope of the presently claimed invention.

Thus, it would have been prima facie obvious to one of ordinary skill in the art at the time of applicant's invention to modify the transchelation reaction components of the Morris, Hani et al. and Mohseni et al. reference compositions to arrive at metal pyrithione:pyrithione acid/salt weight proportions within the presently claimed invention (e.g. 1:20 to 20:1) especially in view of the Kappock reference teaching that optimizing the reaction components is important to enable complete conversion of the pyrithione salt by transchelation to zinc pyrithione.

Discussion

Applicant's arguments directed to the above rejection were considered but deemed nonpersuasive for the following reasons.

Initially, applicant argues that the other relied-upon references have been discussed above.

The Examiner's response regarding applicant's arguments as discussed above is hereby incorporated by reference in its entirety. Initially, it is again noted that applicant composition is claimed as a product-by-process where a "reasonable basis" that the reference and the claimed composition are the same is sufficient to shift the

burden to applicant to provide evidence to the contrary (See *In re Best* cited above); even though applicant may have invented a new way of making an old material. Accordingly, assuming arguendo that applicant is correct that their particles are made by a different process than that utilized by the above- recited Morris/Hani/Mohseni references, the reference particles nevertheless *prima facie* appear to be the same shell and core as applicant's claimed particles; and thus the burden has reasonably been shifted to the applicants to show that their claimed product is different from that of the reference product. Applicant's argument regarding the method fails to rebut the above rejection. Additionally, it is noted that the primary reference teaching of making compositions within the scope of the presently claimed invention would in fact render obvious (without the Kappock reference teaching) the incredibly broadly recited concentration range (e.g. 1:20 to 20:1) presently claimed.

Applicant further argues that the outstanding Office Action acknowledges at page 11 thereof that Kappock teaches that if zinc is employed as the metal, the amount of zinc compound should be optimized to enable complete conversion of the pyrithione salt to the zinc salt of pyrithione. In other words, all of the soluble pyrithione salt, e.g., sodium pyrithione, is converted to zinc pyrithione in accordance with the teachings of Kappock. These teachings of the reference do not suggest the formation of any composite particles, much less those as instantly claimed.

In response to applicant's arguments against the Kappock reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413,

208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant further argues that the rejection based upon the combination of these references is untenable since the result sought to be achieved by virtue of the combination runs counter to the teachings of the individual references. For example, Morris et al teaches away from transchelation of any kind, much less that of the instantly claimed product, by virtue of patentees' disclosure of a common ion (zinc) for the metal and for the pyrithione salt. Contrariwise, Kappock teaches complete transchelation of zinc with a soluble pyrithione salt to produce an insoluble pyrithone salt, namely zinc pyrithione. Accordingly, applicant argues that there is no motivation to combine these references since the teachings of one run counter to the teachings of the other reference.

Initially, it is noted that applicant's transchelation teaching away argument is only applicable to the Morris reference which is silent regarding transchelation. Such is not the case for the Hani and Mohseni references which teach transchelation. Accordingly, for the Hani and Mohseni reference methods the Kappock reference provides explicit motivation (Kappock col. 2) for achieving concentration ranges (e.g. about 1:10 and about 10:1: see col. 3, especially lines 32) within the scope of the presently claimed broad range of 1:20 to 20:1.

Additionally, applicant's arguments with regard to the Morris reference are not convincing since these arguments are misguided in the following respects.

Initially, the Morris reference lack of an explicit teaching as to mechanism (e.g. transchelation or otherwise), is not proof that transchelation doesn't indeed occur.

Nor does the lack of a teaching of transchelation render the Morris reference incompatible with the Kappock reference teaching insofar that applicant fails to appreciate the teaching to one of ordinary skill in the art provided by the Kappock reference. Kappock provides motivation (e.g. storage stability: e.g. in-can preservation against microbial attack) for utilizing optimum concentrations when forming compositions comprising zinc pyrithione utilizing the same reactants as presently claimed (e.g. metal salts: sodium pyithione and metal compound: zinc oxid) for the same biocidal use (e.g. paints). Regardless of the Morris stated/unstated mechanism, one of ordinary skill art would be motivated to optimize the Morris ingredient concentrations in the manner of the Kappock reference for the motivation provided in Kappock due to the absolute similarity of the Kappock/Moriss compositions and their intended use.

Applicant further points out that new claims 47-49 recite metals not suggested in the references.

This argument is not persuasive in light of the election of species requirement and the subsequent election of zinc pyrithione which reads on claims 1, 38 and 40-46, respectively. Thus, the search and subsequent examination was limited to zinc pyrithione; with the additional citation to other relevant art found during this search in order to expedite prosecution. Thus, examiner consideration of claims 47-49 and the

subject matter therein was withdrawn since these claims address nonelected subject matter.

Accordingly, the above rejection is hereby maintained.

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bennett Celsa whose telephone number is 571-272-0807. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on 571-272-0811. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bennett Celsa
Primary Examiner
Art Unit 1639

BC
April 26, 2005